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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

In re R.R., a Person Coming Under the  
Juvenile Court Law.

H041268  
(Santa Clara County  
Super. Ct. No. JF22630)

SANTA CLARA COUNTY  
DEPARTMENT OF FAMILY AND  
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

R.R.,

Defendant and Appellant.

Appellant R.R. is the father of 10-year-old R.R.<sup>1</sup> The juvenile court adjudged R.R. a dependent of the juvenile court under Welfare and Institutions Code section 300, subdivisions (a), (b), (c), and (g),<sup>2</sup> and ordered that appellant randomly test for drugs and alcohol for 60 days as part of his reunification case plan. Appellant contends that the juvenile court abused its discretion in ordering this testing. We affirm the order.

<sup>1</sup> D.P. is the mother of R.R. She is not a party to the appeal.

<sup>2</sup> All further statutory references are to the Welfare and Institutions Code.

## **I. Factual and Procedural Background**

In July 2014, the Department of Family and Children's Services (Department) filed an amended juvenile dependency petition alleging that R.R. came within the jurisdiction of the juvenile court under section 300, subdivisions (a) [serious physical harm], (b) [failure to protect], (c) [serious emotional damage], and (g) [no provision for support]. The petition alleged that R.R. had suffered or there was a substantial risk that he would suffer, serious physical harm by his mother or as a result of his mother's failure to protect him from the conduct of those individuals with whom he had been left. The petition also alleged that R.R. was suffering, or was at substantial risk of suffering, serious emotional damage due to the parents' conduct and that R.R. had been left with no provision for support due to the parents' incarceration. The petition included allegations that: (1) R.R. was placed into protective custody because his mother left him with the maternal grandmother and maternal uncle, who beat him with a belt; (2) the mother physically disciplined R.R. with a shoe and other objects; (3) the mother justified the physical abuse because she stated that R.R. was aggressive and "can be a terrible kid"; (4) the mother did not want R.R. returned to her care, and stated that she never wanted him and that R.R. "only 'brings [her] down'"; (5) the mother had a history of abusing methamphetamine and marijuana and used drugs in R.R.'s presence; and (6) both parents had criminal histories and were currently incarcerated.

The jurisdiction/disposition report, which was filed on July 11, 2014, recommended that the juvenile court take jurisdiction of R.R. and that family reunification services be provided to appellant and the mother. The report summarized the seven prior referrals to the Department regarding the mother and R.R. The mother's criminal history included three drug-related convictions. Appellant was currently incarcerated in prison in Arizona for convictions for vandalism and criminal threats in November 2008. He was expected to be released on August 12, 2014. His prior

convictions included a misdemeanor conviction for driving under the influence in December 2005.

After the mother was arrested for driving with a suspended license, she left R.R. with his maternal grandmother even though she was aware that both the maternal grandmother and uncle hit R.R. with a belt. The mother admitted hitting R.R. with a shoe because she did not want to hurt her hand. She also stated that she did not want to participate in reunification services. The mother had a significant history of substance abuse, was a registered narcotics offender until June 2013, and blamed R.R. for her substance abuse. She claimed that she had been sober for the past year, but that she still used marijuana.

R.R. told the social worker that he was afraid of his mother, grandmother, and uncle because they beat him. He did not want to return to his mother's care "unless things would be different." According to R.R., the mother used drugs in his presence. R.R. also stated that he did not remember ever seeing appellant and that appellant had been in prison during R.R.'s "whole life."

The mother stated, and relatives confirmed, that appellant had physically abused her. Appellant beat, choked, threatened, and stalked her throughout their relationship. In 2008, she attempted to end their relationship. In response, defendant attacked her after she fled to a neighbor's house, destroyed her car, and threatened to blow up her home. Based on this incident, appellant was convicted of vandalism and criminal threats and sentenced to 88 months in prison. The mother was hesitant to cooperate with the District Attorney's office at that time and she believed that appellant was acquitted of some of the charges as a result of her hesitancy. She stated that she was afraid of appellant and feared that he would attempt to harm her when he was released.

The social worker sent letters to appellant, but she was unable to speak with him to assess his needs and interest in reunification services. Though reunification services

were recommended for both parents, there were no specific service recommendations for appellant.

The Department also submitted an addendum report, which was dated July 11, 2014. The social worker had received a telephone call from appellant. Appellant admitted that he was involved in the incident with the mother in 2008 that led to his arrest and subsequent incarceration. He also admitted other incidents of domestic violence with the mother. Appellant reported that the mother began using methamphetamine in 2007 and he ended their relationship. He asserted that he did not use drugs and did not approve of the mother using them. The social worker asked him why he allowed the mother to care for R.R. if he believed that she was using drugs. Appellant responded that he attempted to obtain custody, but he was incarcerated prior to the court date. Appellant also stated that he would be willing to participate in the recommended family reunification services.

The Department attached the police report for the 2008 incident to the addendum report. The police report summarized the mother's description of various incidents of domestic violence in addition to the current incident. The mother also reported that appellant used drugs, usually methamphetamine. While the officer was speaking with the mother, she called appellant and put him on speakerphone. During the conversation, appellant threatened the mother and, according to the officer, "a lot of his statements were rambling." The mother thought that appellant was on drugs by the way that he was talking. The officer recorded more conversations between the mother and appellant, and appellant "seemed very excited and would hang up on her." Appellant said on several occasions that he was on his way to the mother's residence. The officer waited for appellant to return to her residence, but he did not.

The Department attached case plan recommendations to the addendum report and recommended that appellant complete a parent orientation class, a Nurturing Father's

parenting class, a 52-week domestic violence program, weekly alcohol and drug testing, and a substance abuse assessment. If the assessor recommended substance abuse treatment, the Department also recommended additional substance abuse-related services.

At the jurisdiction/disposition hearing, the parents waived their rights to a trial and submitted the matter based on the Department's report. The juvenile court sustained the amended petition.

Regarding disposition, appellant's counsel requested that random alcohol and drug testing as well as a substance abuse assessment be stricken from appellant's case plan. She argued that appellant did not have an alcohol or drug problem and asserted that he tested randomly three or four times during the past year in prison and none of the results were positive. Counsel for the Department noted that appellant had a driving under the influence conviction and had been involved with the mother when she was using drugs. She also pointed out that the Department had been unable to verify whether appellant had been tested for drugs in prison.

The juvenile court ordered, among other things, random testing for alcohol and drugs once a week for 60 days after appellant's release from custody. If appellant had no missed tests, no positive test results, and no diluted tests, then appellant would be tested only if there was a reasonable suspicion that he was under the influence or had been using drugs and/or alcohol. However, if appellant had a missed test, a positive test result, or a diluted test, then appellant would be required to undergo a substance abuse assessment and additional services as recommended by the assessor.

## **II. Discussion**

Appellant argues that the juvenile court abused its discretion in ordering him to submit to random drug testing. We disagree.

In general, when a child is removed from his or her parents, the juvenile court must order the social worker to provide reunification services to the parents. (§ 361.5, subd. (a).) Thus, after a child had been adjudged a dependent child of the court “the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . . .” (§ 362, subd. (a).) “The program in which a parent . . . is required to participate shall be designed to eliminate those conditions that led to the court’s finding that the child is a person described by Section 300.” (§ 362, subd. (d).) Moreover, “[t]he reunification plan “‘must be appropriate for each family and be based on the unique facts relating to that family.’” [Citations.]” (*In re Drake M.* (2012) 211 Cal.App.4th 754, 770 (*Drake M.*)). We review the juvenile court’s dispositional order under the abuse of discretion standard. (*Ibid.*)

Appellant contends that the trial court abused its discretion by ordering drug testing, because there was no evidence establishing that drug testing would help eliminate the conditions that led to juvenile court intervention.

*In re Christopher H.* (1996) 50 Cal.App.4th 1001 (*Christopher H.*) is instructive. In that case, the father argued that a disposition order requiring him to submit to random drug and alcohol testing was inappropriate because the juvenile court had not sustained the allegation that his alcohol problems placed his son at risk. (*Id.* at p. 1005.)

*Christopher H.* held that the juvenile court had not abused its discretion in ordering the testing as part of the father’s case plan. (*Id.* at p. 1008.) *Christopher H.* reasoned: ““[A] reunification plan formulated to correct certain parental deficiencies need not necessarily address other types of conduct, equally deleterious to the well-being of a child, but which had not arisen at the time the original plan was formulated.”” [Citation.] However, when the court is aware of other deficiencies that impede the parent’s ability to reunify with his child, the court may address them in the reunification plan. [Citation.]” (*Ibid.*)

Here, when appellant was arrested in 2008, the mother reported that he used drugs, usually methamphetamine. At that time, a police officer noted that appellant's statements in his conversations with the mother were "rambling" and appellant "seemed very excited," thereby reasonably supporting a finding that appellant was using drugs when he committed the offenses against the mother. Appellant also had a conviction for driving under the influence in 2005.<sup>3</sup> Moreover, appellant was not a custodial parent who had demonstrated an ability to care for R.R. Appellant had been incarcerated for almost six years and had left R.R. in the custody of the mother, whom he knew was using methamphetamines. Under these circumstances, the juvenile court reasonably concluded that appellant's substance abuse history would be an obstacle to reunification with R.R. Thus, the juvenile court did not abuse its discretion in ordering random drug and alcohol testing for 60 days to address this issue.

Appellant's reliance on *In re Jasmine C.* (2003) 106 Cal.App.4th 177 (*Jasmine C.*) and *In re Basilio T.* (1992) 4 Cal.App.4th 155 (*Basilio T.*)<sup>4</sup> is misplaced. *Jasmine C.* held that the juvenile court had abused its discretion in ordering the mother to attend parenting classes, because there was no evidence that the mother abused her children, failed to protect them or engaged in any inappropriate behavior. (*Jasmine C.*, at pp. 180-181.) *Basilio T.* held that the juvenile court erred in including a substance abuse component to the parents' case plan, since there was no evidence that they had a substance abuse

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<sup>3</sup> Thus, the present case is distinguishable from *In re Sergio C.* (1999) 70 Cal.App.4th 957 (*Sergio C.*). In that case, the father argued that there was insufficient evidence to justify the drug testing order. (*Id.* at p. 960.) The only evidence that the father had a substance abuse problem was the mother's statement to the social worker. (*Ibid.*) *Sergio C.* held that "the unsworn and uncorroborated allegation of an admitted drug addict" was insufficient evidence to support the order and remanded to the juvenile court with directions to order further investigations to determine whether drug testing was necessary. (*Ibid.*)

<sup>4</sup> *Basilio T.*, *supra*, 4 Cal.App.4th 155 was superseded by statute on another point as noted in *In re Lucero L.* (2000) 22 Cal.4th 1227, 1239-1242.

problem. (*Basilio T.*, at p. 172.) *Basilio T.* concluded that the social worker's observation that the mother "behaved somewhat out of the usual" was insufficient evidence that she had a substance abuse problem. (*Ibid.*) Unlike in *Basilio T.* and *Jasmine C.*, here, there was substantial evidence that appellant had a substance abuse problem.

Relying on *Drake M.*, *supra*, 211 Cal.App.4th 754, appellant also argues that "when the evidence establishes that a parent is actively using drugs, that evidence does not necessarily rise to a level justifying an order requiring a parent to drug test." *Drake M.* is distinguishable from the present case. In *Drake M.*, the father used medical marijuana to treat his arthritis, but there was no evidence that he used the drug in front of his son or while he was responsible for caring for him. (*Drake M.*, at pp. 767-768.) Moreover, the record established that the child was healthy and well cared for by the father, there was family support, the father maintained regular employment, there were no allegations of abuse, and the father appeared capable of providing for the child's basic needs. (*Id.* at pp. 768, 770.) *Drake M.* held that there was no evidence supporting a finding of jurisdiction based on the father's conduct. (*Id.* at p. 769.) *Drake M.* also held that the juvenile court's order requiring the father to submit to random drug testing and to participate in drug counseling and parenting classes was an abuse of discretion, because the order would not address the mother's substance abuse and mental health issue, which were the basis for the jurisdictional finding. (*Id.* at pp. 769-770.) In contrast to the father in *Drake M.*, appellant had been incarcerated since 2008 and had not demonstrated an ability to care for R.R., who had no memory of him. Moreover, the record established that appellant was using drugs when he committed the offenses that resulted in his incarceration.

In sum, the juvenile court did not abuse its discretion in ordering drug and alcohol testing for a limited period after appellant's release from prison.



### **III. Disposition**

The order is affirmed.

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Mihara, J.

WE CONCUR:

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Bamattre-Manoukian, Acting P. J.

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Grover, J.